

Applicants: Bearcroft et al.

Atty Docket: P01952US0

Title: Shaped Particle and Composition  
 For Bone Deficiency and Method  
 Of Making the Particle

Customer No. 26271

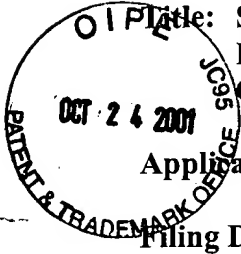
Application No.: 09/517,981

Examiner: Pellegrino, B.

Filing Date: March 3, 2000

Group Art Unit: 3738

Assistant Commissioner for Patents  
 Washington D.C. 20231



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RESPONSE TO RESTRICTION REQUIREMENTAND PRELIMINARY AMENDMENTS

Dear Sir:

This is in response to the restriction requirement issued July 24, 2001. Applicants submit  
 this response on October 24, 2001, making this a timely filing.

12/06/2001 MWOLDER1 00000025 062375 09517981

01 FC:103 18.00 CH

RESPONSE

Claims 1-63 are pending in the application and are subject to a restriction/election  
 requirement. The Examiner states that Applicants are required under 35 U.S.C. 121 to elect a  
 single disclosed species and subspecies for prosecution on the merits to which the claims shall be  
 restricted if no generic claim is finally held to be allowable. Furthermore, the Examiner states  
 that currently no claims are generic.

Applicants traverse the restriction and furthermore assert that the Examiner has set forth  
 an improper genus/species election. The broadest independent claim covering the particle, claim  
 1, is a generic claim to claims 2-26 because it is generic for the particle, and dependent claims 2-  
 25 are species of the particle. For example, some detail the material from which the particle is  
 made. This is a classic genus/species relationship as described in MPEP §§ 806.04(d) and  
 806.04(e).

In keeping with Applicants' assertion, Applicants elect the species of the particle being  
 ceramic (new claim 64; see Preliminary Amendment below) as the elected species. Support for  
 this claim is in claim 4. It is a species of claim 1 as it is a composition of the particle of generic  
 claim 1.

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In the event that the Examiner maintains the present restriction, Applicants elect Species A and Subspecies I as defined in the Action and submit that the claims readable thereon are claims 1-19 and 26.

Applicants will refrain from canceling any claims until the restriction issue is resolved.

**PRELIMINARY AMENDMENT**

Please replace the original claim 5 with the following claim 5. Please add new claim 64.

a<sup>1</sup> 5. (Once Amended) The particle of Claim 4 wherein said ceramic is comprised of a calcium salt.

a<sup>2</sup> 64. (New) The particle of Claim 1, wherein the particle is ceramic.

Applicants owe a fee of \$18.00 for new claim 64. Applicants assert no other fees are required. Applicants hereby authorize withdrawal from the standing account of Fulbright & Jaworski L.L.P. 06-2375 under Order No. 10004751 for \$18.00 and, if additional fees are required at any time during prosecution of this application, please also charge them to this account.

Respectfully submitted,

*Melissa L. Sistrunk*

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Date: Oct. 24, 2001  
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